

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: *Social Media Adolescent
Addiction/Personal Injury Products Liability
Litigation*

Case No.: 4:22-md-03047-YGR

MDL No. 3047

This document relates to:
All Actions

**STIPULATION AND [PROPOSED]
ORDER REGARDING PROTECTED
COUNSEL COMMUNICATIONS AND
GOVERNING PRIVILEGE LOG
PROTOCOL**

This Stipulation and Order Regarding Protected Counsel Communications and Governing Privilege Log Protocol (“Order”) shall apply to certain protected communications between counsel or govern the procedures for withholding documents from discovery based on a recognized claim of privilege or protection of responsive documents that would otherwise be subject to discovery. This Order applies equally to all parties, who for the purposes of below shall be designated in their various roles as either the “Producing Party” or “Receiving Party” (defined below). All deadlines and timeframes in this order that reference “days” are referring to calendar days and not business days.

I. DEFINITIONS

All capitalized terms are defined as in the Protective Order (ECF No. 665) entered in the Action unless otherwise defined below.

1 A. JCCP 5225: JCCP 5225 shall refer to the actions currently included in JCCP
2 5225, any other action hereafter added or transferred to JCCP 5225, and all actions later
3 remanded to their respective transferor courts from JCCP 5225.

4 B. Discovery Material: all items, documents, or other information, regardless of the
5 medium or manner in which it is generated, stored, or maintained, that is subject to discovery.

6 C. Government Counsel: attorneys, as well as their support staff, supervisors, law
7 clerks, investigators, and any other employees of a government law office or consumer
8 protection agency that represents a Party to the Action, JCCP 5225, or a Related Litigation.

9 D. Non-Filing Government Counsel: attorneys, as well as their support staff,
10 supervisors, law clerks, investigators, and any other employees of a government law office or
11 consumer protection agency, that were part of the multistate coalition investigating the claims
12 and allegations related to this Action and Related Litigation, and that have not brought suit in
13 this Action or a Related Litigation.

14 E. Outside Legal Counsel: attorneys, as well as their support staff to whom it is
15 reasonably necessary to disclose the information for this Action or JCCP 5225 (including but not
16 limited to attorneys, paralegals, secretaries, law clerks, and investigators), who are not
17 employees of a Party to this Action, JCCP 5225, or a Related Litigation but are retained to
18 represent a Party to this Action, JCCP 5225, or a Related Litigation or to advise a Party with
19 respect to this Action, JCCP 5225, or a Related Litigation.

20 F. Privileged Material: Discovery Material to the extent it is protected from
21 discovery based on a claim of attorney-client privilege, work product protection, or any other
22 applicable privilege or claim of protection.

23 G. Receiving Party: a Party that receives Discovery Material or a description of
24 Discovery Material which is designated as whole or in part as Privileged Material.

25 H. Related Litigation: litigations listed by caption in Appendix A, or as
26 supplemented.

27 **II. PROTECTED COUNSEL COMMUNICATIONS**

28 Cooperation by and among Plaintiffs' Outside Legal Counsel, including Government

Counsel, and by and among Defendants' Outside Legal Counsel, is essential for the orderly and expeditious resolution of this Action and JCCP 5225. The communication of information (A) among and between Plaintiffs' Outside Legal Counsel, including Government Counsel, and (B) among and between Defendants' Outside Legal Counsel, shall not be deemed a waiver of the attorney-client privilege or the protections afforded for attorney work product. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work-product doctrine.

III. PRIVILEGE LOG PROTOCOL

To the extent that Discovery Material is withheld from production on the basis of a good faith claim that it contains Privileged Material, the Producing Party shall produce a privilege log as set forth below within 45 days of the date by which the documents would otherwise have been produced if not for the claim of privilege or protection, unless another time is agreed to by the parties. Privilege logs shall be produced on a rolling basis.

A. Exclusions from Logging Documents Reflecting Privileged Communications or Work Product: To the extent that they contain Privileged Material, the following materials presumptively need not be logged on a privilege log:

1. Communications with Counsel, including Government Counsel, expressly regarding this Action, JCCP 5225, or a Related Litigation after date of initial complaint filing;¹
2. Communications exclusively between and among any Plaintiffs' Outside Legal Counsel expressly regarding this Action or JCCP 5225, including pre-filing investigations regarding the allegations and claims asserted therein;
3. Communications between and among Government Counsel and Non-Filing Government Counsel, including their Outside Legal Counsel, during the period encompassing the pre-suit investigation that culminated in this matter and Related Litigation regarding their investigations of the allegations and

¹ "[E]xpressly regarding this Action, JCCP 5255, or a Related Litigation" means a communication about the litigation activities themselves, not the subject matter of the lawsuits.

claims asserted in this Action. This exclusion from logging also applies to their pre-suit investigations of other Defendants related to allegations and claims asserted in this Action and Related Litigation, regardless of whether any Government Counsel names the Defendant in a complaint.

4. Work product regarding this Action, JCCP 5225, or a Related Litigation, created by an attorney or at the direction of an attorney, who is part of a Party's Counsel, including Government Counsel;
5. Communications expressly regarding this Action, JCCP 5225, or a Related Litigation exclusively between a Party and their Outside Legal Counsel or Government Counsel;
6. Communications expressly regarding this Action, JCCP 5225, or a Related Litigation exclusively between and among either a Party's Outside Legal Counsel or Government Counsel, including their Outside Legal Counsel, and their Experts or professional vendors, and attorney work product created by Experts or professional vendors, except (with respect to Communications between and among a Party's Outside Legal Counsel or Government Counsel, including their Outside Legal Counsel, and their testifying Experts) to the extent the Communications:
 - a. relate to compensation for the Expert's study or testimony;
 - b. identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed;
 - c. identify assumptions that the party's attorney provided and that the expert relied on in forming opinions to be expressed.

Notwithstanding the foregoing, if a Party asserts that communications regarding interactions or communications with any regulator or government agency, if any, are Privileged Material, other than communications included in Section III.A.3, and those subject to the common interest privilege such as those between Plaintiffs' counsel and State Attorneys General, such communications shall be logged, irrespective of the involvement of counsel, including Outside

1 Legal Counsel who were retained for this Action. Nothing herein prohibits a Party from
 2 requesting a privilege log for materials presumptively excepted from logging upon a showing of
 3 good cause.

4 B. Redacted Documents. Any Discovery Material that contains both Privileged
 5 Material and non-privileged material must be disclosed with the purportedly privileged portion
 6 redacted. The redacted portion shall be indicated on the Discovery Material itself with the
 7 appropriate redaction type reflected in the metadata. The Parties will not be required to log
 8 privilege redactions.

9 C. Format. Privilege logs shall be produced in Excel format that allows for text
 10 searching, sorting, and organization of data, and shall be produced in a cumulative manner, so
 11 that each subsequent privilege log includes all privilege claims from prior logs. No listings,
 12 therefore, shall be deleted from the log. If a privilege claim is withdrawn in whole or in part, the
 13 listing shall indicate that the claim was withdrawn in whole or in part. The correspondence
 14 accompanying each privilege log shall indicate the document production volume(s) and Bates
 15 range(s) to which the privilege log applies.

16 D. Identification of Counsel. The Producing Party shall identify on the privilege log
 17 the attorney, legal staff or personnel with an “ATTY” or exclamation mark.

18 E. Metadata-Plus-Topic Log. For documents withheld on the basis of privilege or
 19 work product, the Producing Party shall provide a metadata log containing the below metadata
 20 fields (as defined in the ESI Order, ECF 690), a field or column indicating the privilege log
 21 volume, a category/topic field for the Privileged Material (*see* Appendix B), and a column to
 22 indicate if an entry was downgraded, modified, or withdrawn (*see* Section IV, *supra*). The
 23 Producing Party shall review and analyze each document for privilege and will not rely solely on
 24 the metadata to make the determination.

- 25 1. PRIV LOG ID
- 26 2. BEGBATES
- 27 3. ENDBATES
- 28

- 1 4. BEGATTACH
- 2 5. ENDATTACH
- 3 6. ALLCUSTODIANS
- 4 7. PRIV TYPE (e.g., Attorney-Client Privilege, Attorney Work Product,
- 5 Common Interest)
- 6 8. FILENAME
- 7 9. EMAILSUBJECT
- 8 10. AUTHOR
- 9 11. TO/FROM/CC/BCC
- 10 12. DATETIMESENT
- 11 13. DATETIMERECEIVED
- 12 14. DOCDATE
- 13 15. DOCUMENT TYPE
- 14 16. HASHVALUE
- 15 17. ALLFILEPATHS
- 16 18. DATELASTMODIFIED
- 17 19. THREADID

21 F. Narrative Log. Alternatively, a Producing Party may elect to produce a narrative
 22 privilege log for documents withheld from production, which would contain a description field
 23 describing each document and the basis for the privilege assertion, in addition to the metadata
 24 fields listed in Section III.E above. Appendix B shall not apply to narrative logs.

25 G. Listserv or Group Email. To the extent that Listserv or group email addresses are
 26 identified on the privilege log, the Producing Party shall work in good faith to identify individuals
 27 and/or groups of individuals and/or groups of individuals who make up such Listserv or group
 28 email upon request, which may follow the production of the log.

1 H. Families of Discovery Material. If an attachment (parent or child) to a Discovery
 2 Material or communication is being withheld, such attachment(s) shall be identified in the
 3 privilege log as separate entries. Families of Discovery Material shall be logged together in
 4 sequence with the parent document followed by any other withheld documents in the Discovery
 5 Material family to the extent multiple family members are privileged. A Producing Party shall not
 6 assert that Discovery Material constitutes Privileged Material on the sole basis that it is part of a
 7 family containing other Privileged Material or is attached to a communication with Outside Legal
 8 Counsel or its In-House Legal Department.

9 I. Lesser Inclusive Emails. A Producing Party need not log lesser inclusive emails
 10 within the same email chain so long as the most-inclusive email record is logged.

11 J. To the extent documents require a log format that differs from the requirements
 12 outlined above, the parties will meet and confer in good faith, and endeavor to agree upon an
 13 appropriate log format for such documents.

14 **IV. PRIVILEGE CHALLENGE PROTOCOLS**

15 Resolution of disputes regarding claims of privilege shall be in accordance with Section H
 16 of the Court's Standing Order for Discovery in Civil Cases.

17 A. Challenges to Privilege Claims: Following the receipt of a privilege log or
 18 documents that have been redacted for privilege, a Receiving Party may identify, in writing (by
 19 PRIV LOG ID or Bates number), the particular documents that it believes require further
 20 explanation. The Producing party shall use reasonable efforts to respond to requests within 10
 21 days for challenges totaling 50 documents and under. If the challenge exceeds 50 documents, the
 22 Parties will meet and confer regarding a response time frame. The Parties shall meet and confer to
 23 try to reach a mutually agreeable solution.

24 B. Changes to Redactions or Privilege Designations: To the extent that any privilege
 25 assertions are downgraded, modified, or withdrawn by the Producing Party as a result of meet and
 26 confer in accordance with the process above, the Producing Party shall within 14 days, or within a
 27 time frame as agreed to by the Receiving and Producing Parties, produce any such downgrades as
 28 production overlays and indicate the same in the production cover letter to be served with a "key"

that indexes the privilege identification number with the assigned Bates Number for each downgraded document. In the event any privilege assertion is downgraded, modified, or withdrawn by the Producing Party with respect to documents to be used in an upcoming deposition, the Parties shall meet and confer and the Producing Party shall use reasonable efforts to produce the documents in advance of the deposition.

V. MODIFICATION

This Order may be modified at any time by the Court on its own motion, for good cause shown on motion of a party, or by agreement of the parties with the Court's approval. Compliance with this Protocol satisfies the Producing Party's obligations under Federal Rule of Civil Procedure 26(b)(5) to expressly claim a privilege or protection and describe the nature of Privileged Material for other parties to assess the claim.

IT IS SO STIPULATED, through Counsel of Record.

DATED: April 1, 2024

Respectfully submitted,

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IT IS SO ORDERED that the foregoing Agreement is approved.

DATED: _____

MAGISTRATE JUDGE PETER H. KANG

Appendix A

The Parties agree the below litigations are within the scope of Related Litigation*:

Meta

- *State of Arkansas, ex rel. Tim Griffin, Attorney General v. Meta Platforms, Inc.; Facebook Holdings, LLC; Facebook Operations, LLC; Meta Payments Inc.; Facebook Technologies, LLC; Instagram, LLC; and Siculus, Inc.*, Case No. 57CV-23-47 (Arkansas Circuit Court, Polk County).
- *District of Columbia v. Meta Platforms, Inc. and Instagram, LLC*, Case No. 2023 CAB 006550 (D.C. Superior Court).
- *Commonwealth of Massachusetts v. Meta Platforms, Inc. and Instagram, LLC*, Case No. 2384CV02397 (Massachusetts Superior Court, Suffolk County).
- *State of Mississippi, ex rel. Lynn Fitch, Attorney General v. Meta Platforms, Inc.; Instagram, LLC; Meta Payments, Inc., and Meta Platforms Technologies, LLC*, Case No. 25CH1:23-cv-01205 (Mississippi Chancery Court, First Judicial District).
- *State of New Hampshire v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 217-2023-CV-00594 (New Hampshire Superior Court, Merrimack, SS).
- *State of Oklahoma, ex rel. Gentner Drummond, Attorney General of Oklahoma v. Meta Platforms, Inc., and Instagram, LLC*, Case No. CJ-2023-00180 (Oklahoma District Court, Osage County).
- *State of Tennessee, ex rel. Jonathan Skrmetti, Attorney General and Reporter v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 23-1364-IV (Tennessee Chancery Court, Davidson County).
- *Utah Division of Consumer Protection v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 230908060 (Utah Third District Court, Salt Lake County).
- *State of Vermont v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 23-CV-04453 (Vermont Superior Court, Chittenden County).
- *State of New Mexico, ex rel. Raul Torrez, Attorney General v. Meta Platforms, Inc.; Instagram, LLC; Meta Payments Inc.; Meta Platforms Technologies, Inc; and Mark*

Zuckerberg, Case No. D-0101-CV-202302838 (New Mexico First Judicial District Court, Santa Fe County).

- *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886110-B (Nevada District Court, Clark County).
- *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886115-B (Nevada District Court, Clark County).
- *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886120-B (Nevada District Court, Clark County).
- *M.G. v. Meta Platforms, Inc.; Instagram, LLC; Facebook Payments, Inc.; Siculus, Inc.; Facebook Operations, LLC; and Tory Dwanell Saidstuart* , Case No. 3:23-cv-01861 (D. Or.).
- *Norma Nazario, individually and as Administrator of the Estate of Zackery Nazario v. Bytedance LTD.; Bytedance, INC.; TikTok, Inc.; Meta Platforms, Inc., Metropolitan Transportation Authority, and New York City Transit Authority*, Case No. 0151540/2024 (N.Y. Supreme Ct., New York County).

Snap

- *State AG Nevada v. Snap, Inc.*, A-24-886113-B (Nevada District Court, Clark County)
- *Kennedy Harris, et al v. Snap*, 05251 LACV044283 (Iowa District Court, Dallas County)
- *Linda Blea v. Snap*, D-412-CV-2022-00236 (New Mexico – 4th Judicial District, San Miguel County)
- *V.V. and E.Q., individually and as next friends to minor C.O., v. Meta, et al.*, FBT-CV-23-5050779-S (Conn. Superior Court, Judicial District of Fairfield at Bridgeport); 3:23-cv-00284-SVN (D. Conn.); UWYCV235032685S (Conn. Superior Court, Complex - Waterbury Dist.)
- *Cody Dahl and Tonya Cole Dahl v. Alphabet, Inc., et al.*, 4:23-cv-9472 (W.D. Tex.)

TikTok

- *Nasca, et al. v. ByteDance Ltd., et al.*, No. 2:23-cv-02061 (E.D.N.Y.)
- *Anderson, et al. v. TikTok Inc., et al.*, No. 2:22-cv-01849-PD (E.D. Pa.), *appeal docketed*, No. 22-3061 (3d Cir.)
- *Bogard, et al. v. TikTok Inc., et al.*, No. 3:23-cv-00012 (S.D. Ind.)
- *Nazario, et al. v. ByteDance Ltd., et al.*, No. 151540/2024 (New York Supreme Court, New York County)
- *Nevada v. TikTok Inc., et al.*, No. A-24-886127-B (Nevada District Court, Clark County)
- *Utah v. TikTok Inc., et al.*, No. 230907634 (Utah Third District Court, Salt Lake County)
- *Arkansas v. TikTok Inc., et al.*, No. 12CV-23-65 (Arkansas Circuit Court, Cleburne County)
- *Iowa v. TikTok Inc., et al.*, No. 24-1522 (Iowa District Court, Polk County)
- *Kansas v. TikTok Inc., et al.*, (Kansas District Court, Shawnee County)
- *Indiana v. TikTok Inc., et al.*, No. 23A-PL-03110 (Ind. Ct. App.)

YouTube

- *Cody Dahl et al. v. Alphabet, Inc. et al.*, Case No. 1:23-cv-01496 (W.D. Tex.) (removed December 11, 2023)

* Upon agreement between the Plaintiffs and Defendants, this list may be updated without leave of Court and by serving it on all Parties.

Appendix B

The Parties list below the agreed-upon topics for the topic field for the privilege log option in Section III.E. A Party is only required to choose one topic for each withheld document, but may choose multiple.

1. acquisitions, sales, or divestitures
2. advertising and marketing
3. board of directors meeting agendas, presentations, and/or draft meeting minutes
4. compliance with foreign laws and regulations
5. compliance with U.S. laws and regulations
6. contract drafting or evaluation
7. drafting of, implementation of, or compliance with company policies or procedures
8. foreign government hearings, investigations, or inquiries
9. U.S. government hearings, investigations, or inquiries
10. human resources/employee issues
11. identity and age verification issues
12. intellectual property and patent issues
13. legal hold
14. the current litigation (MDL 3047), JCCP 5225, and Related Litigation
15. litigation other than the MDL 3047, JCCP 5225, and Related Litigation
16. periodic regulatory filings
17. product features
18. review of proposed communications re public and media appearances, press releases, or other published statements
19. user safety
20. [a logging party may add additional categories as appropriate during review, which will be disclosed to the Requesting Party.]

ATTESTATION

I, Ashley M. Simonsen, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: April 1, 2024

/s/ Ashley M. Simonsen

Ashley M. Simonsen